

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Application of)
SAN GABRIEL VALLEY WATER COMPANY)
(U337W) for Authority to Increase Rates Charged)
for Water Service in its Fontana Water Company) Application 05-08-021
Division by \$5,662,900 or 13.1% in July 2006;) (Filed August 5, 2005)
\$3,072,500 or 6.3% in July 2007; and by \$2,196,000)
or 4.2% in July 2008.)
_____)

Order Instituting Investigation on the)
Commission's Own Motion into the Rates,) Investigation 06-03-001
Operations, Practices, Service, and Facilities of) (Filed March 2, 2006)
San Gabriel Valley Water Company)
(Utilities 337 W).)
_____)

**RESPONSE OF
SAN GABRIEL VALLEY WATER COMPANY
TO PETITION FOR MODIFICATION
OF DECISION 07-04-046**

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August 23, 2007

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Pursuant to Rule 16.4(f) of the Commission’s Rules of Practice and Procedure, San Gabriel Valley Water Company (“San Gabriel” or “SGV”), Applicant and Respondent in the above-captioned proceedings, hereby respectfully provides its response to the Petition for Modification (the “Petition”) submitted by the Division of Ratepayer Advocates, the City of Fontana, and the Fontana Unified School District (“Petitioners”) regarding Decision 07-04-046 (the “Decision”), which was served and apparently filed on July 24, 2007. This response is timely filed.

I.

SUMMARY OF SAN GABRIEL'S RESPONSE

Petitioners seek to supplement the Decision's findings of fact and ordering paragraphs and to correct certain calculations and figures in the Decision and its appendices. However, San Gabriel itself must correct the Petitioners' serious misstatement of the Commission's intent on two important issues – the disposition of gains from a potential future sale of an existing office property and the accrual of interest in the calculation of a refund amount. San Gabriel also offers clarifying restatements of some of Petitioners' proposals for additional findings of fact, conclusions of law, and ordering paragraphs and supplements Petitioners' corrections to certain numbers in the Decision and its appendices. In addition, San Gabriel proposes corrections to Appendix D, prescribing a new tariff schedule for Facilities Fees, in order to conform Appendix D to changes that the Commission made to the text and findings of the Decision.

II.

ONE OF PETITIONERS' PROPOSED FINDINGS IS COMPLETELY WRONG AND IS BASED ON MISLEADING USE OF AN EXCERPT FROM THE DECISION.

The first full paragraph on page 4 of the Petition begins with two quotations from page 50 of the Decision, the first authorizing San Gabriel to phase in up to \$4.9 million of costs for a new office complex through CWIP, and the second stating that all gains derived from sale of the existing facilities should be returned to ratepayers as an offset to the cost of new facilities. Petitioners note that these provisions are not reflected in the Decision's Findings of Fact or Ordering Paragraphs and propose a Finding of Fact intended to do so.

Petitioners are seriously misrepresenting the Decision. The second quotation referenced above – regarding disposition of future gains from sale of the existing office property – is taken from a paragraph, at the top of page 50, describing DRA's

recommendations – **not** the Commission’s conclusions. To present that quotation as the Commission’s conclusion is seriously misleading.

The Decision presents the Commission’s own thinking on this subject in two later paragraphs, carrying over from page 50 to page 51. In those paragraphs, the Decision addresses removal of the existing office property from rate base once it is no longer used and useful and once a new headquarters has been added to rate base, and notes its concern that transfer of the property to an affiliate might not constitute a sale under the meaning of Section 790.

Thus, the Decision treats the eventual disposition of the existing office property as a transaction that may be subject to Section 790 if conducted at arm’s length. It is clear that the Commission **did not** adopt DRA’s recommendation that “[a]ll gains derived from the sale of the existing facilities should be returned to ratepayers.” Petitioners’ attempt to convert this passage from the Decision into a Finding of Fact must be rejected. Petitioners should be reprimanded for what may have been an attempt to mislead the Commission.

If any part of Petitioners’ proposed Finding of Fact is to be added to the Decision, it should only be that portion of the first sentence referencing the Commission authorizing San Gabriel to include up to \$4.9 million in CWIP, but the proposed sentence reads more like an Ordering Paragraph than a Finding of Fact. Actually, a Finding of Fact would not be appropriate on this subject, because the \$4.9 million figure was only a “Rough Budget Estimate” of the cost of “Renovation of Existing Facilities to Code” and was not by any means a firm contract proposal “for the cost of refurbishing the existing facility”. *See*, Exhibit 10 (McGraw/San Gabriel), Att. A at 3. In place of Petitioner’s proposal, San Gabriel proposes simply an Ordering Paragraph that “San Gabriel is authorized to phase in up to \$4.9 million in CWIP for the proposed new office complex during the years 2006 and 2007”.

III.

PETITIONERS' PLOY TO INCREASE THE REFUND AMOUNT BY ACCRUING INTEREST OVER THE SAME PERIOD AS THE UTILITY'S RETURN IS BEING DISALLOWED IS AN ILLEGITIMATE ATTEMPT AT DOUBLE DIPPING.

Petitioners propose what they call a Finding of Fact to the effect that “refund amounts ordered in this proceeding shall continue to accrue interest until the full amount is fully refunded to customers.” Petition, at 4. San Gabriel does not challenge the propriety of having interest accrue on an amount that has been identified for payment of refunds.

Petitioners also seek to require the inclusion of accrued interest in the calculation of the “refund amount” itself. They propose to add a phrase to Finding of Fact 85 so that the amount of the refund will be calculated “with interest”, and they further propose to revise Ordering Paragraph 4 by requiring that interest be added to the calculated refund balance. Petition at 6, 7. This ploy is entirely unjustified.

The allowed rate of return compensates investors both for the time value of money and for risks assumed. The effect of accruing interest on an accumulating refund obligation over the same period during which the utility's return on an amount of plant investment is being disallowed would be to give ratepayers *double* the carrying costs of the refund amount. That is because San Gabriel invested the proceeds at issue – two-thirds of the net proceeds of the Mid-Valley Landfill contamination settlement – in utility plant and the Decision requires San Gabriel to reclassify those proceeds, retroactively, as CIAC, thereby excluding that amount of investment from rate base in the calculation of present and future rates. By this means, ratepayers are enjoying the benefit of this investment in utility plant without having to bear any associated cost of capital. The retroactive designation of settlement proceeds as CIAC produces an accumulating refund obligation equal to the retroactively disallowed return on that amount of plant investment. To accrue interest for ratepayers' benefit on that accumulating

refund obligation will, in effect, impose a negative return on San Gabriel for that plant investment while awarding a “double dip” of carrying costs to ratepayers.

The unfairness of Petitioners’ proposal is illustrated by the following contrast. The Decision designated 67% of the net contamination settlement proceeds as ratepayer funds and required San Gabriel to treat those funds as a Contribution beginning in July 2004. Thus, San Gabriel will have to refund the corresponding revenues for the past three years equal to the authorized return on that amount of plant investment. An alternative disposition would have been to calculate and accrue interest on the “refund amount” from the date it was identified in July 2004 and to have required San Gabriel now to pass through to ratepayers the “refund amount” has been holding plus the accrued interest. In that latter case, however, San Gabriel’s investments in utility plant would have been shareholder funds, none of which would be converted retroactively into CIAC and so no refund of accumulated earnings on those investments would be in order.

In short, there were two equally valid means by which the Commission could have calculated a refund amount currently owed based on identification of certain settlement proceeds as ratepayer funds as of July 2004. One approach, which the Commission adopted, was to recognize that the utility invested those proceeds in utility plant, to treat that investment as CIAC, to calculate the return the utility earned on that plant over the three intervening years, and to identify that accumulated return as the “refund amount.” The other approach, simpler but less favorable to ratepayers, would have been to calculate the accrual of interest on the identified ratepayer funds over the three intervening years and identify the principal plus interest as the “refund amount.” What is not a valid approach is what Petitioners propose: to convert the utility’s plant investment into CIAC and require refunds not only of the three years’ return on that investment but also of concurrently accrued interest on the investment amount.

Accordingly, Petitioners' proposal to include references to the addition of interest to Finding of Fact No. 85 and Ordering Paragraph No. 4 should be rejected.

IV.

FURTHER REVISIONS ARE REQUIRED TO ACCURATELY EXPRESS THE DECISION'S FINDINGS, CONCLUSIONS, AND ORDERING PARAGRAPHS.

Several other findings Petitioners propose to add to the Decision are imprecisely or incorrectly stated, purport to predict future events, or describe actions by the Commission, none of which are appropriate for findings of fact. These proposed statements should be reworded and, in some cases, redesignated as conclusions of law or ordering paragraphs. On the other hand, some of Petitioners' proposed ordering paragraphs are expressed as predictions or as legal conclusions, and also should be restated. San Gabriel's specific suggestions in this regard are as follows:

- In the first paragraph of page 3, Petitioners propose an additional Finding of Fact to state that "The Commission caps the Sandhill project at \$35 million." This statement is unclear and reads more like an ordering paragraph than a factual finding. It would be more appropriate to state, as an additional Ordering Paragraph, that "The costs of the Sandhill water treatment plant upgrade project authorized for inclusion in rate base shall be capped at \$35 million, of which \$12 million is included in rate base for Test Year 2006-2007 and up to \$23 million may be added to rate base by annual advice letter filings."
- In the third paragraph of page 3, Petitioners propose a Finding of Fact that the Commission "will review" Sandhill construction costs and that revenue increases included in rates by advice letter "shall be" subject to refund. This so-called Finding combines a prediction of future Commission action with a

“subject to refund” order. It would be more appropriate for these sentences to be a Conclusion of Law, with the words “will” and “shall” replaced by the word “should.”

- Later in the third paragraph of page 3, Petitioners propose a new Ordering Paragraph, stating that “San Gabriel will track” certain revenue increases. Again, this reads like a prediction, not an order. The word “will” should be replaced by the word “shall.”
- Likewise, at the top of page 4, Petitioners propose another new Ordering Paragraph, this time using the word “should” in the first and second lines of the proposed order. This is the language of a Conclusion of Law. The word “should” ought to be replaced in both instances by the word “shall.”
- In the last paragraph on page 4, Petitioners propose as a Finding of Fact a statement that refund amounts “shall continue to accrue interest.” As discussed in Section III, above, San Gabriel does not oppose having interest accrue on an amount that has been identified for payment of refunds, but this does not justify including accrued interest in calculating the “refund amount” itself. What troubles San Gabriel about this proposed Finding of Fact is that it reads like either a prediction or an Ordering Paragraph. It would make better sense to replace the word “shall” with the word “should” and to treat the proposed statement as a Conclusion of Law. Also, the reference to “refund amounts” should be changed to “refund amount”, since the Decision calculates only a single amount as subject to refund.
- The Ordering Paragraph Petitioners propose at the top of page 5 should not be added to the Decision. The first sentence of the proposed Ordering Paragraph

duplicates, in more general terms, the final sentence of Ordering Paragraph 4 at page 129 of the Decision. The second sentence of the proposed Ordering Paragraph is simply a statement of fact duplicating an identical statement at page 100 of the Decision – it does not order any person to do anything.

V.

SOME OF THE FIGURES AND CALCULATIONS IN THE TEXT AND IN APPENDICES A AND E OF THE DECISION REQUIRE FURTHER CORRECTION.

There also are several problems with Petitioners' proposed revisions to calculations and figures in the Decision and its appendices.

In the fourth paragraph on page 6, Petitioners are correct in seeking to have the statement of rate base at page 100 of the Decision match the amount shown as the adjusted average rate base for Test Year 2006-2007 in Appendix A. However, the figure of \$85,367,300 presented as that amount at page 2 of Appendix A is incorrect, because the amount of Contributions, (\$18,981,400), shown in the same column of Appendix A, also is incorrect.

The problem is traceable to page 4 of Appendix E to the Decision, where the average CIAC balance for year 2005 is calculated using a value of \$2,994,600 for "CIAC – Gains on Sale" for the Beginning of Year ("BOY") 2004, drawn from page 2 of Exhibit E. The "CIAC – Gains on Sale" value that should have been included in this calculation was the value for End of Year ("EOY") 2004, which page 2 of Appendix E shows as \$2,955,700. Page 4 of Appendix E also shows annual "Depreciation – Gains on Sale" as (\$107,600), while that value should be (\$144,300) – calculated by multiplying the Total Pre-Tax Gains allocated to ratepayers of \$5,612,873 (shown at page 3 of Appendix E) by the annual depreciation rate of 2.57% (shown in the Notes at page 4 of Appendix E).

Correcting these two errors on page 4 of Appendix E yields End-of-Year and Average CIAC Balances for 2005 of \$18,102,800 and \$17,723,700, respectively. Corrections of similar magnitude carry forward to the Test Year 2006-2007 and 2007-2008 columns of page 4 of Appendix E, producing an Average Balance of \$18,835,800 for Test Year 2006-2007.¹ That last amount should be inserted as a negative adjustment to Rate Base for “Contributions” at page 2 of Appendix A, producing an Average Rate Base of \$85,512,900. That last number, in turn, should be substituted for the amount of \$86,123,679 at page 100 of the Decision as well as for the amount of \$85,367,300 at page 6 of the Petition.

All these corrections lead to a change in the Average Rate Base shown at the foot of the Adjusted Test Year 2006-2007 column on page 2 of Appendix A, from \$85,367,300 to \$85,512,900.² This amount also should be shown as the Rate Base at Adopted Rates on page 1 of Appendix A. In addition, there is an error in the Ad Valorem Taxes line of this table, both entries on which should be \$839,700. (That value is correctly shown in the income tax calculation on page 3 of Appendix A.). These corrections carries over to other line items in both the Present Rates and the Adopted Rates column on page 1 of Appendix A as well as to the Income Tax Calculation on page 3 of that Appendix, with the most important effect being a revision to Operating Revenue at Adopted Rates on Appendix A, page 1, which should be shown as \$42,070,200.³

There also are problems with some of the wording changes to Exhibit E proposed at page 9 of the Petition, dealing with revenue requirement effects of the allocation of gains

¹ The same corrections produce an Average Balance of \$19,526,900 for Test Year 2007-2008, which carries over to the second entry on the Contributions line of Appendix A, page 2, which in turn produces an Average Rate Base of \$94,228,600 for the second Test Year as shown on that page.

² The value for District Rate Base shown on the third line from the bottom of the TY 2006-2007 column of the Rate Base table also should be revised. The correct entry is \$81,298,600.

derived from the Mid-Valley Landfill contamination settlement. The first paragraph under Heading B correctly recommends two changes in the entries in the fourth line of figures on page 1 of Exhibit E. However, the Petition goes astray in the second paragraph under Heading B, which suggests inserting a reference to “January 2007-June 2007” in a compilation that results in a “Total thru Dec 2006.” That makes no sense. Instead, the line showing “July-Dec 2006” and “\$0.0” should be deleted. The “Total thru Dec 2006,” shown as “\$803.8”, should instead show “\$1,346.4” or, as indicated in the corrected version of Appendix E provided in Attachment A, this note too should be deleted, as should the last line of the Notes at the bottom of this page. The heading for the last column on page 1 of Exhibit E should be revised to read “Total 7/17/04 to 12/31/06”. Finally, for the sake of accuracy, the headings of each of the tables at pages 1, 2, and 3 of Exhibit E should be corrected to replace the phrase, “After-Tax Allocation of Gains on Sale of Property”, with the phrase, “Pre-Tax Allocation of Gains from Contamination Settlement.”

The final paragraph on page 9 of the Petition indicates confusion caused by a typographical error in Footnote 4 on page 99 of the Decision. The numerical equation in the third line of that footnote appears to present a calculation of the net addition to CIAC that would have resulted from a 50/50 split between shareholders and ratepayers of the net proceeds from the Mid-Valley Landfill contamination settlement, while the fourth line of that footnote presents that same calculation based on the adopted 33/67 split. It appears that an editor of the Decision added the fourth line with the intention of replacing the third line, but failed to delete the third line. San Gabriel recommends that the third line of Footnote 4 on page 99 be deleted.

³ Corrected versions of Appendix A and Appendix E, consistent with this discussion, are provided as Attachment A to this response.

With this correction, Footnote 4 and its calculations are accurately reflected at page 3 of Appendix E.

Page 3 of Appendix E, however must be corrected in several other respects: First, the headings of the two final columns of figures on that page should be revised to insert “67%” in place of the first “50%” and “33%” in place of the second “50%”; also, the first and third entries in the “33%” column should be corrected to comprise 33%, rather than 50%, of the Taxable Net Gain shown in the third column of figures, and the total in the “33%” column should be corrected accordingly.

Several further corrections to Appendix E also are appropriate. The net-to-gross multiplier (“N-T-G”) shown at line 25 on page 2 of Appendix E is incorrect. As indicated at page 63 of the Decision, the adopted net-to-gross multiplier is 1.772805. Also, in the Notes at the end of Appendix E, page 4, it would be clearer to insert the amount of CIAC at the beginning of Test Year 2004 as shown on Appendix E, page 3, that is, \$2,994,582, in place of the phrase “CAIC Gains on Sale.” Finally, the “50%” multiplier should be deleted from the “2005 & thereafter” line of the Notes, inasmuch as the depreciation calculation should be for a full year in every year after 2004. All the above-noted corrections are shown in the revised version of Appendix E provided in Attachment A to this response.

VI.

APPENDIX D SHOULD BE MODIFIED TO CONFORM WITH CHANGES THE COMMISSION MADE IN THE TEXT AND FINDINGS OF THE DECISION REGARDING NEWLY AUTHORIZED FACILITIES FEES.

In its comments on both the Proposed Decision of ALJ Barnett and the Alternate Proposed Decision (“APD”) of Commissioner Bohn, San Gabriel recommended that the Commission expressly authorize San Gabriel to collect Facilities Fees from developers and builders as well as from customers and to include the estimated Facilities Fees in the amount of

any deposit required of an applicant for extension of service, and therefore recommended changes in the text, the findings of fact, and the proposed Facilities Fees tariff, Appendix D. *See, e.g.,* Comments of San Gabriel Valley Water Company on Alternate Proposed Decision of Commissioner Bohn, filed February 26, 2007, at 21 and App. A. (proposed findings 66 and 68, proposed revisions to text at page 67, and proposed revisions to Appendix D). The adopted Decision approved and incorporated San Gabriel’s proposed revisions in the text and findings but not in the Appendix. *See especially,* Decision, at 69 (items 5 and 6), 111 (first paragraph), 123 (Finding 69, items 5 and 6), *but compare* App. D.

In order to make the Decision’s Appendix D consistent with the changes made to the Decision pursuant to San Gabriel’s comments on Commissioner Bohn’s APD, Appendix D should be revised as follows:

1. The Applicability section should be revised to read as follows:

“Applicable to all applicants for installation of service connections by the utility in the territory served for premises not previously connected to its distribution mains, for additional service connections to existing premises, and for increases in size of service connections to existing premises at the customer’s request.”
2. A new paragraph 4 should be added to the Special Conditions section, to read as follows:

“An estimate of the Facilities Fees shall be included in any deposit required of the applicant under Rules 15 and 16, or otherwise. The tariff sheet in effect at the time the statement of actual construction costs is provided to the applicant under Rules 15 or 16, or otherwise, shall determine the applicable amount of Facilities Fees.”

With these changes, Appendix D will be consistent with the text and Finding 69 of the Decision.

VII.
CONCLUSION

Subject to the adjustments, revisions, and further corrections noted above, San Gabriel supports the Petitioners' request for modifications to Decision 07-04-046.

Respectfully submitted,

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August 23, 2007

CERTIFICATE OF SERVICE

I, Jeannie Wong, hereby certify that on this date I will serve the foregoing RESPONSE OF SAN GABRIEL VALLEY WATER COMPANY TO PETITION FOR MODIFICATION OF DECISION 07-04-046, on the parties on the service list for A.05-08-021/I.06-03-001 below.

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By hand delivery:

Hon. Robert A. Barnett
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Executed this 23rd day of August, 2007 in San Francisco, California.

/S/ JEANNIE WONG

Jeannie Wong